

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

AFFIRMATION

In Re:

Case No.: 24-10685-pb
(Chapter 13)

Dawn D'Aguilar

Debtor.

Assigned to:
Hon Philip Bentley
Bankruptcy Judge

I, Ehret Anne Van Horn, Esq. am an attorney duly licensed to practice law in the Courts of this State and in the United States Bankruptcy Court for the Southern District of New York and hereby state as follows:

1. I submit the within Affirmation under penalty of perjury in support of the motion of Fay Servicing, LLC as servicer for U.S. Bank Trust National Association, not in its individual capacity, but solely as Trustee of LSF9 Master Participation Trust ("Secured Creditor"), a Secured Creditor of the above-referenced Debtor, to terminate the automatic stay in this case with respect to the real property commonly known as 1815 Endenwald Avenue, Bronx, NY 10466.

2. Secured Creditor is the holder of a note executed by Dawn D'Aguilar on or about the 26th day of January, 2001 in the principal amount of \$237,194.86 and interest (the "Note"), secured by a mortgage bearing even date therewith, which is recorded in the Office of the City Register in the City of New York on the 31st day of August, 2005 CRFN 2005000488372 (the "Mortgage") covering the premises commonly known as 1815 Endenwald Avenue, Bronx, NY 10466 (the "Mortgaged Premises"). A copy of the Consolidated Note, Consolidated Mortgage, and Assignments of Mortgage is annexed hereto as **Exhibit 'A'**.

3. On the 22nd day of April, 2024 Debtor Dawn D'Aguilar filed a Petition under Chapter 13 of Title 11 U.S.C. §101 et seq with this Court, and an Order for relief was duly entered.

4. The Note and Mortgage provide that the Debtor will be in default if they do not make full monthly payments on each due date. As of July 3, 2024, the Debtor is due for 3 payments in the amount of \$2,099.26 each for the months of April 30, 2024 to June 30, 2024 and has not cured said default. Furthermore, 1

payment due on July 30, 2024 and 1 payment due on July 30, 2024 will be due at the date this motion is heard. A Motion for Relief from Stay Worksheet is attached hereto as **Exhibit 'B'**.

5. As of the 18th day of June, 2024 there is a total indebtedness on the Note and Mortgage in the sum of \$531,501.90. Interest on the unpaid principal balance will continue to accrue, and to protect its security in the Mortgaged Premises Secured Creditor may be required to make advances for property taxes, insurance and related matters.

6. Based on the BPO attached hereto as **Exhibit 'C'**, said real property is valued at \$775,000.00.

7. Section 362(d)(1) of the Bankruptcy Code provides in pertinent part that the Court shall grant relief from the stay imposed by Section 362(a) "for cause, including lack of adequate protection of an interest in property..." As set forth above, "cause" exists to vacate the automatic stay as the Debtor has failed to make monthly post-petition mortgage payments to Secured Creditor. Under Section 362(d)(1), failure to make post-petition mortgage payments constitutes "cause" to modify the automatic stay. See, In re Taylor, 151 B.R. 646 (E.D.N.Y. 1993); In re Davis, 64 B.R. 358, 359 (Bankr. S.D.N.Y. 1986); In re Frascatore, 33 B.R. 687 (B. Ct. E.D. Pa. 1983).

8. A copy of a proposed Order granting the relief sought by Secured Creditor is annexed hereto as **Exhibit 'D'**.

9. In the event that this motion is scheduled to be heard beyond the time-period set forth in 11 U.S.C. Section 362(e) or is subsequently adjourned beyond said time period, Secured Creditor hereby waives its rights under 11 U.S.C. Section 362(e) and agrees to be bound by the Order of the Court on the instant Motion.

10. No prior application has been made for the relief requested herein.

WHEREFORE, Secured Creditor respectfully requests that an Order be granted terminating the automatic stay immediately as to Secured Creditor's interest in the Mortgaged Premises together with such other, further and different relief as the Court may deem just in this matter.

DATED: July 11, 2024
Williamsville, New York

Yours,

By: /s/ Ehret Van Horn
Ehret Anne Van Horn, Esq
GROSS POLOWY LLC
Attorneys for Secured Creditor
Fay Servicing, LLC as servicer for U.S. Bank
Trust National Association, not in its individual
capacity, but solely as Trustee of LSF9 Master
Participation Trust
1775 Wehrle Drive, Suite 100
Williamsville, NY 14221
Telephone (716) 204-1700